

Message Text

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E.O. 11652: N/A

TAGS: ETRN, AU

SUBJECT: CIVAIR: CHARTER UNDERSTANDING

REF: STATE 67297

1. FOLLOWING IS TEXT OF DRAFT MEMORANDUM OF UNDERSTANDING AS AGREED TO BY CIVIL AVIATION DEPARTMENT. LAST CHANGE INCORPORATED WAS ADDITION OF NEW PARAGRAPH I (D) (4) AS REQUESTED STATE 106558 AND CONFIRMED BY TRANSPORT MINISTRY, VIENNA 5190. AUSTRIANS HAVE MADE NO SUGGESTIONS FOR CHANGES SINCE THEN.

2. SEPT-EL DEALS WITH CURRENT STATUS OF PROPOSED AGREEMENT.

DRAFT MEMORANDUM OF UNDERSTANDING

REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA HAVE DISCUSSED THE CONDITIONS GOVERNING TRAVEL GROUP CHARTER (TGC) FLIGHTS AND ADVANCE BOOKING CHARTER (ABC) FLIGHTS BETWEEN THE UNITED STATES AND AUSTRIA, AND HAVE CONCLUDED THAT THEIR RESPECTIVE RULES ARE SUBSTANTIALLY SIMILAR, ARE EXPERIMENTAL IN CHARACTER, AND ARE "ADVANCE CHARTER" RULES IN THE TRANS-
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ATLANTIC CONNOTATION OF THE TERM. NEVERTHELESS, AT THE

PRESENT TIME EACH RULE CONTAINS DISSIMILAR ELEMENTS RELATED TO THE DISTINCTIVE MARKETING CONDITIONS, INTERNAL LEGAL SITUATIONS, AND ENFORCEMENT STRUCTURES OF EACH COUNTRY. THEY RECOGNIZED THAT THESE DISSIMILAR ELEMENTS ARE AN OBSTACLE TO THE CARRIAGE OF ADVANCE CHARTER TRAFFIC BETWEEN THEIR TWO COUNTRIES. THEY RECOGNIZED THAT UNIFORMITY OF RULES WOULD HAVE BEEN PREFERABLE BUT HAS NOT BEEN ACHIEVED; THEREFORE THE SOLUTION WHICH WILL BEST SERVE THE PUBLIC INTEREST IN PRESENT CIRCUMSTANCES IS THAT TRAFFIC CONFORMING WITH THE ADVANCE CHARTER RULES OF THE COUNTRY OF ORIGIN OF THE TRAFFIC SHOULD BE ACCEPTED AS CHARTER-WORTHY BY THE OTHER COUNTRY. THIS MEMORANDUM SETS FORTH THE AGREED REGULATORY PROCEDURES TO GIVE EFFECT TO THIS CONCEPT AS WELL AS PARTICULAR ACTIONS EACH PARTY WILL UNDERTAKE FOR THE PERIOD ENDING DECEMBER 31, 1975. THIS MEMORANDUM MAY BE TERMINATED AT THE END OF ANY CALENDAR YEAR, PROVIDED AT LEAST THREE MONTHS'S PRIOR NOTICE HAS BEEN GIVEN, OR AT SUCH A TIME AS EITHER GOVERNMENT TERMINATES OR ABANDONS THE ADVANCE CHARTER RULE, WHICH WAS THE BASIS FOR ENTERING INTO THE PRESENT AGREEMENT, IMMEDIATELY UPON NOTICE TO THE OTHER GOVERNMENT.

I. AGREED PROCEDURES FOR MUTUAL IMPLEMENTATION AND ENFORCEMENT OF ADVANCE CHARTER REGULATIONS

A. CHARTERWORTHINESS. EACH PARTY UNDERTAKES TO ACCEPT AS CHARTERWORTHY TRAFFIC (A) ORIGINATED IN THE TERRITORY OF THE OTHER PARTY AND ORGANIZED AND OPERATED PURSUANT TO THE ADVANCE CHARTER (TGC OR ABC) RULE 1 OF THAT PARTY AND (B) ORIGINATED OUTSIDE THE TERRITORY OF EITHER PARTY AND OPERATED PURSUANT TO AN ADVANCE CHARTER RULE WHICH HAS BEEN RECOGNIZED BY THE PARTY TO WHOSE TERRITORY THE CHARTER FLIGHT IS OPERATED. FOR THE PURPOSE OF THIS UNDERSTANDING, THE COUNTRY OF ORIGIN OF THE TRAFFIC IS TO BE DETERMINED BY REFERENCE TO A POINT IN THE TERRITORY OF EITHER PARTY (OR A POINT OUTSIDE) FROM WHICH THE GROUP OF ADVANCE CHARTER PASSENGERS DEPARTS ON THE OUTWARD PORTION OF A ROUND-TRIP (INCLUDING CIRCLE AND OPEN-JAW JOURNEY UNDER THE TGC OR ABC RULES.

B. ADMINISTRATION AND ENFORCEMENT. EACH PARTY RESERVES ITS RIGHT TO REQUIRE THE FILING OF CHARTER PROGRAMS ORIGINATING IN THE TERRITORY OF THE OTHER PARTY.² TO MINIMIZE THE LIMITED OFFICIAL USE

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ADMINISTRATIVE BURDENS OF ENFORCEMENT PROCEDURES ON CARRIERS AND ORGANIZERS, AND AT THE SAME TIME TO COORDINATE ENFORCEMENT PROCEDURES, EACH PARTY:

(1L UNDERTAKES NOT TO REQUIRE THE ROUTINE FILING WITH IT OF PASSENGER LISTS AND OTHER DOCUMENTS FOR CHARTER TRAFFIC ORIGINATED IN THE TERRITORY OF THE OTHER PARTY AND ORGANIZED AND OPERATED PURSUANT TO THE ADVANCE CHARTER RULE OF THAT

PARTY AND ORIGINATED OUTSIDE THE TERRITORY OF EITHER PARTY AND OPERATED PURSUANT TO AN ADVANCE CHARTER RULE WHICH HAS BEEN RECOGNIZED BY THE PARTY TO WHOSE TERRITORY THE CHARTER FLIGHT IS OPERATED.³

(2) UNDERTAKES THAT ITS REGULATORY AUTHORITIES WILL TRANSMIT, ON REQUEST, TO THE REGULATORY AUTHORITIES OF THE OTHER PARTY, PASSENGER LISTS AND OTHER APPROPRIATE DOCUMENTS TO FACILITATE THE CONDUCT OF SPOT CHECKS OF FLIGHTS, ESPECIALLY IF ON SUCH FLIGHTS THERE IS COMMINGLING OF ABC/TGC GROUPS WITH GROUPS ORGANIZED IN ACCORDANCE WITH OTHER REGULATIONS.

(3) UNDERTAKES TO TRANSMIT TO THE REGULATORY AUTHORITIES OF THE OTHER PARTY, FOR APPROPRIATE ENFORCEMENT OF ITS RULE, EVIDENCE OBTAINED OF POSSIBLE RULE VIOLATIONS ON FLIGHTS OPERATED PURSUANT TO THE ADVANCE CHARTER RULE OF THE OTHER PARTY, RATHER THAN INTERRUPT THE FLIGHT AND CAUSE INCONVENIENCE TO OR STRANDING OF THE TRAVELING PUBLIC.

(4) INTENDS TO CONDUCT SPOT CHECKS AND TO CONDUCT OCCASIONAL POST FLIGHT REVIEWS OF ADVANCE CHARTER FLIGHTS OPERATED PURSUANT TO ITS RULE, AND TO TAKE APPROPRIATE ACTION WHEN VIOLATIONS ARE OBSERVED.

C. TARIFFS, RATES, AND FARES. TO ASSURE THAT PRICES ARE NEITHER UNREASONABLY HIGH OR LOW TAKING INTO ACCOUNT ALL RELEVANT COSTS, EACH PARTY SHALL REQUIRE THE FILING OF TARIFFS OR PRICE SCHEDULES (AS APPLICABLE) AND ENFORCE CONFORMITY TO TARIFF OR PRICE SCHEDULES ON ALL FLIGHTS OPERATED.

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D. OTHER CONSIDERATIONS. TO FURTHER FACILITATE THE DEVELOPMENT OF THE INTERNATIONAL AIR TRANSPORT SYSTEM, THE REGULATORY AUTHORITIES OF EACH PARTY SHALL:

(1) STAND READY TO MODIFY THEIR ADVANCE CHARTER RULES SHOULD IT BECOME NECESSARY IN ORDER TO PREVENT UNDUE DIVERSION FROM THE SCHEDULED AIR SERVICES OF EACH BETWEEN THEIR TERRITORIES, OR TO CORRECT ANY SERIOUS EXPERIENCED ENFORCEMENT PROBLEM.

(2) CONSULT, AT THE EARLIEST PRACTICAL TIME AFTER A REQUEST TO DO SO HAS BEEN RECEIVED FROM THE OTHER PARTY, OR ANY MATTER COVERED BY ITS ADVANCE CHARTER RULES, OR CONCERNING THE REASONABLENESS OF PROGRAM SIZE, OR CHARTER TARIFFS, RATES OR FARES FOR TRAFFIC MOVING UNDER THESE

RULES.

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(3) WORK TOWARDS ULTIMATELY ACHIEVING COMMONALITY OF
ADVANCE CHARTER RULES TO THE EXTENT POSSIBLE IN ORDER TO MINIMIZE
THE NECESSARY YIELDING BY EACH PARTY OF SOME CONTROL OVER
TRAFFIC ORIGINATED IN THE TERRITORY OF THE OTHER.

(4) ACCEPT AS CHARTERWORTHY ANY BONA FIDE "PRIOR AFFINITY"
CHARTER TRAFFIC CONFORMING TO ITS RULES DURING THE PERIOD OF
VALIDITY OF THIS TYPE OF CHARTER.

II. PARTICULAR UNITED STATES ACTIONS

THE UNITED STATES UNDERTAKES THAT ITS REGULATORY AUTHORITIES
WILL:

(1) BEGIN AND CONCLUDE, AS SOON AS PRACTICABLE, RULE MAKING
PROCEDURES TO IMPLEMENT ACCEPTANCE OF THE ADVANCE BOOKING
CHARTER (ABC) RULE OF AUSTRIA ON A CONTINUING BASIS DURING
THE LIFE OF THIS UNDERSTANDING OR ANY WHICH MAY SUPERSEDE
IT, FOR THE PURPOSE OF DETERMINING THE CHARTERWORTHINESS OF
TRAFFIC WHICH ORIGINATES IN AUSTRIA AND CONFORMS TO THE SAID
ABC RULE OF AUSTRIA.

(2) AS AN INTERIM MEASURE, AND UNTIL SUCH TIME AS THE ACTIONS
MENTIONED IN (1) ABOVE ARE EFFECTUATED, GRANT INDIVIDUAL CASE
WAIVERS OF SUCH PROVISIONS OF ITS CHARTERWORTHINESS REGULATIONS

AS MIGHT PRECLUDE THE OPERATION OF ANY INDIVIDUAL FLIGHT OR
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SERIES OF ABC (OR ABC AND TGC SPLIT CHARTER) FLIGHTS, PROVIDED
THE ABC GROUP MOVEMENTS FOR WHICH WAIVERS ARE SOUGHT ORIGINATE
IN AUSTRIA AND CONFORM TO THE ABC RULE OF AUSTRIA.

III. PARTICULAR ACTIONS OF THE REPUBLIC OF AUSTRIA

AUSTRIA UNDERTAKES THAT ITS REGULATORY AUTHORITIES WILL TAKE
ALL APPROPRIATE ACTIONS TO PERMIT THEM TO ACCEPT AS CHARTERWORTHY
TRAFFIC WHICH ORIGINATE IN THE UNITED STATES AND CONFORMS
TO THE TGC RULE AND SO TO ACCEPT SUCH TRAFFIC.

FOOTNOTES

1) TGC MEANS THOSE RULES OF THE UNITED STATES EMBODIED
IN PART 372A OF THE SPECIAL REGULATIONS OF THE UNITED STATES
CIVIL AERONAUTICS BOARD, AND ANY AMENDMENT THERETO. ABC MEANS
THOSE RULES OF AUSTRIA EMBODIED IN THE AUSTRIAN DEPARTMENT
OF CIVIL AVIATION'S LETTER NO. 39.210/130-I/7-1973 OF JANUARY
20, 1973 TO THE U.S. CIVIL AERONAUTICS BOARD AND ATTACHMENT
AS WELL AS ANY AMENDMENTS THERETO.

2) IN THIS REGARD, AND IN ORDER TO IDENTIFY THE ORIGIN OF
TRAFFIC AND TO MONITOR CHARTER PRICES, EACH PARTY MAY REQUIRE
FOR EACH FLIGHT INFORMATION RELATING TO THE PROPOSED DATE,
TIME AND ROUTING OF THE FLIGHT, THE IDENTITY OF THE TRAVEL
ORGANIZER AND THE NUMBER OF SEATS CONTRACTED FOR AS WELL AS
THE PRICES PROPOSED TO BE CHARGED TO AND ULTIMATELY PAID BY
THE TRAVEL ORGANIZER AND THE PASSENGER.

3) BY WAY OF EXCEPTION, ALL PASSENGER LISTS AND OTHER SIMILAR
DOCUMENTS REQUIRED BY THE REGULATORY AUTHORITIES OF THE COUNTRY
OF ORIGIN OF THE TRAFFIC SHALL BE FILED WITH THE REGULATORY
AUTHORITIES OF BOTH PARTIES ON SPLIT CHARTER FLIGHTS OF TGC
TRAFFIC AND ABC TRAFFIC. HUMES

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